



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: October 11, 2012

Agenda Item No. 10A: Office of Mine Reclamation, Lead Agency Review Team (LART) Reports on City of Pacifica.

INTRODUCTION: Under the California Surface Mining and Reclamation Act of 1975 (SMARA), there are currently 113 lead agencies: 52 counties, 50 cities, and the State Mining and Geology Board (SMGB). A lead agency as defined under SMARA means “the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving reclamation plan pursuant to this chapter.” SMARA lead agencies also have other responsibilities including assuring the conduct of adequate inspections at least once each calendar year, and taking appropriate enforcement actions when warranted.

In 2007, the Department of Conservation, Office of Mine Reclamation (OMR) established the Lead Agency Review Team (LART). The LART has completed its lead agency review report for the City of Pacifica (City). The LART will provide a summary of the results of its review of this SMARA lead agency. In addition, the SMGB, based on review of the LART report, will consider issuance of a 45-Day Notice to Correct Deficiencies.

STATUTORY AUTHORITY: Public Resources Code (PRC) Sections 2774.4(a) and (b) provide criteria to the SMGB when considering assumption, or restoration, of certain SMARA powers of a lead agency. Specifically, PRC Section 2774.4(a) states that if certain deficiencies exist, the SMGB can assume certain SMARA lead agency responsibilities as follows:

“If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority.”



Executive Officer's Report

PRC Section 2774.4(c) provides criteria the SMGB considers should it determine to issue a 45-Day Notice to Correct Deficiencies, and states:

“(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.”

BACKGROUND: California is the only state in the conterminous United States where surface mine reclamation is not regulated at the state level. Most states also maintain permitting authority when it comes to mining regulation; whereas, in California permitting authority is decided at the local level. SMARA, pursuant to PRC Section 2728, defines a lead agency as a city, county, San Francisco Bay Conservation and Development Commission (BCDC), or the SMGB which has the principal responsibility for approving a reclamation plan. Under SMARA, there are currently 113 lead agencies: 52 counties, 50 cities, and the SMGB.

In 2007, the SMGB published Information Report IR 2006-07 titled “*Report on SMARA Lead Agency Performance Regarding Mine Reclamation.*” This evaluation assessed lead agencies performances of periodic mine inspections, adjustment of annual financial assurances and enforcement of the preparation of Interim Management Plans (IMP) should a surface mine site be characterized as idle for a period exceeding one year. Based on this review, the overall performance of SMARA lead agencies was found to significantly vary throughout the state. For the most part, overall performance was found to be poor, reflecting a number of factors including financial constraints, and limited or lack of technical expertise. As of March 2011, LART has commenced review of 18 SMARA lead agencies.

City of Pacifica SMARA Program: The SMGB was the former SMARA lead agency for this jurisdiction. When the SMGB certified the City’s mining ordinance in on May 12, 2006, the City became the SMARA lead agency. The City has one surface mining operation (Pacifica Quarry; CA Mine ID #91-41-0001) within its jurisdiction. The primary commodity was sand and gravel, and the current status is noted as closed with no intent to resume.

The LART report dated October 3, 2012, noted several outstanding deficiencies based on an inspection conducted on August 2, 2011. From a review of the City in its administration of SMARA, several deficiencies were noted. These deficiencies included failure to adjust the

financial assurance and subsequently allowing the financial assurance mechanism of \$1,044,179 to expire on January 17, 2012, without the site being reclaimed (Deficiency No. 1), failure to conduct adequate inspections (Deficiency No. 2), failure to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations (Deficiency No. 3), and failure to take appropriate enforcement actions (Deficiency No. 4). A summary is provided in Table 1.

| Table 1 Summary of Surface Mining Operations Situated in the City of Pacifica | | | | | | | | |
|----------------------------------------------------------------------------------|---------------------------------------|----------------------|----------------------------------------|---------------------------------------|------------------|-----------------------------------------------------------------------------|------------------|--------------------|
| Surface Mine Name | California Mine Identification Number | Operator | Surface Mine Status | Last Inspection Report on File (year) | Approved Acreage | Disturbed Acreage (2011 Annual Report/Inspection Report/GPS - Aerial Photo) | Produced Product | Deficiencies Noted |
| Pacifica Quarry | 91-41-0001 | Pacific Lenders, LLC | Closed with no intent to resume mining | 2011 | 34 | 34/34/34 | Sand and gravel | 1,2,3,4 |

EXECUTIVE OFFICER'S RECOMMENDATION: The information being provided by OMR is for the SMGB's information. However, based on the current status of the SMARA program in the City, the Executive Officer recommends that a 45-Day Notice to Correct Deficiencies (Notice) be issued to the City. Should the City not correct the deficiencies to the satisfaction of the SMGB within the 45-day period, a public hearing would be scheduled pursuant to PRC Section 2774.4(c).

SUGGESTED MOTION LANGUAGE: The SMGB may consider the following motion language:

[Should the SMGB determine that the City is fulfilling its responsibilities and obligations as a lead agency pursuant to SMARA, and that no deficiencies and violations exist, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before it today and contained in the Executive Officer's Report, find that the City of Pacifica is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the SMGB not consider issuance of a 45-Day Notice of Deficiencies.

[or]

[Should the SMGB determine that the City is making significant progress, but certain deficiencies and violations remain uncorrected, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before it today and contained in the Executive Officer's Report, find that the City of Pacifica is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, but note that significant deficiencies persist, and direct the Executive Officer to conduct a thorough review of current mine inspection reports for all surface mine sites within the jurisdiction of the City, and conduct on-site visits, as appropriate and deemed necessary. Upon completion, the Executive Officer will report back to the SMGB, and the SMGB can consider issuance of a 45-Day Notice of Deficiencies, if deemed necessary.

[or]

[Should the SMGB determine that deficiencies and violations remain uncorrected and the City is failing to make progress, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before it today and contained in the Executive Officer's Report, direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to the City of Pacifica pursuant to Public Resources Code Sections 2774.4(a) and (c).

Respectfully submitted:



Stephen M. Testa
Executive Officer